

REMARKS

The Office Action dated June 24, 2008 has been received and reviewed. Claims 106-162 are pending in the application. Applicants thank the Examiner for indicating the allowability of claims 125-126, 129-130, 133-134, 137-138, 141-142, 145-146, 148-150, 153-154, 157-158, and 161-162.

The Examiner has indicated that claims 110 and 111 would be allowable if rewritten in independent form. Accordingly, claim 106 has been amended. Claims 163-175 are new, based on claim 111 as originally filed, and claims 107-109 and 112-120 as originally filed.

Objection to the Specification

The Examiner has objected to the amendment filed August 31, 2007 as introducing new matter regarding Seq. ID NO:39 which defines "Xaa" as "Asp." With this amendment, applicants have amended the Specification to attach a new Sequence Listing that defines "Xaa" at position 214 to be cysteine, alanine, or asparagine, with the correct designation of "Asn" for asparagine. Support for the amendment can be found, for example, on page 7, lines 31-36. No new matter has been added.

Double Patenting Rejection

The Examiner provisionally rejected claims 106-107, 109, 112-115, 118-120, 127, 131, 135, 139, 151, 155 and 159 under the judicially created doctrine of double patenting over claims 1-4, 6-10, 14-16, 18-19, 21, and 35, 37 of co-pending Application No. 10/111,723. Applicants respectfully re-submit that in a provisional obviousness-type double patenting rejection between two applications, the rejection should be withdrawn in the earlier-filed application if it is the only rejection otherwise remaining in the application.

As stated in MPEP 804 (I)(B)(1):

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

Thus, Applicants submit that this application no. 09/763,824, filed February 7, 2001, with all other rejections addressed as explained below, is allowable except for this remaining provisional-type double patenting rejection. In contrast, application no. 10/111,723, filed April 26, 2002, stands rejected on other grounds.

Rejections under 35 USC 103

Claims 106-108, 112-115, 118-123, 127, 131, 135, 139, 151, 155, and 159 are rejected under 35 USC 103(a) as being unpatentable over Thompson et al. (J. Biol. Chem. 272:18766-18771, 1997; "Thompson U") in view of Thompson et al. (Gene 103:171-177, 1991; Thompson V") Hirokawa et al. (US Patent No. 6,074,859; "Hirokawa") and Lowe et al. (US Patent 6,132,983 "Lowe"). Additionally, claims 109, 124, 128, 132, 136, 140, 152, 156 and 160 are rejected under 35 USC 103(a) as being unpatentable over Thompson U in view of Thompson V, Hirokawa, and Lowe as applied to claims 106-108, 112-115, 118-123, 127, 131, 135, 139, 151, 155 and 159 above and further in view of additional teachings of Thompson U and Lowe. Claims 116-117, 143 and 147 are also rejected under 35 USC 103(a) as being unpatentable over Thompson U in view of Thompson V, Hirokawa and Lowe as applied to claims 106-108, 112-115, 118-123, 127, 131, 135, 139, 151, 155 and 159 above and further in view of Barnes (PNAS 87:9183-9187, 1990). Claims 144 and 148 are also rejected under 35 UCS 103(a) as being unpatentable over Thompson U in view of Thompson V, Hirokawa and Lowe as applied to claims 109, 124, 128, 132, 136, 140, 152, 156 and 160 above and further in view of Barnes.

Claim 106 has been amended to include the language of claim 110. Accordingly, the above rejections under 35 UCS 103(a) are moot. Applicants respectfully request that the rejections be withdrawn.

All outstanding objections and rejections are believed to have been met and overcome. If a telephonic conference with Applicants' undersigned representative would be useful in advancing the prosecution of the present application, the Examiner is invited to contact the undersigned at (651) 733-2180. A notice of allowance for all pending claims is respectfully solicited.

Respectfully submitted,

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NML:jlh/#519885 Amendment to OA dated 6-24-08
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